

Position Paper

UEAPME¹'s answer to the Public Consultation on the Application of Directive 2008/52/EC (mediation in civil and commercial matters)

Introduction

UEAPME welcomes the European Commission's initiative to gather insights on the application of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, in preparation of the report foreseen by Article 11 of the Directive itself. The "Mediation Directive" has the aim to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes, by encouraging the use of mediation and by encouraging a balanced relationship between mediation and judicial proceedings both in civil and commercial matters.

UEAPME shares the Directive's objective to facilitate amicable settlement of disputes and to ensure the quality of mediation through codes of conduct, the enforceability of agreements resulting from mediation and the availability to the general public of information on how to contact mediators. However, even if the Directive is a well-written and comprehensive legal text, we do not think that it completely reached its objective. Indeed, judicial practices and procedures are still the most used method in many Member States, causing unfortunately high costs especially for SMEs.

Benefits of the Directive

We believe that is really important to better promote and strengthen alternative procedures for resolving disputes, as civil mediation could be a faster service with lower economic costs in many cases. The quick and confidential nature of the process allows parties to find areas of agreement and can accommodate the needs and the wishes of the parties. As experience demonstrates, agreements reached through mediation tend to preserve an amicable and sustainable relationship between the parties. This is especially important in the commercial world as the aim of enterprises is to conclude business transactions without being involved in disputes. Mediation can provide the possibility to find a prompt and amicable solution while maintaining good cooperative relations.

Therefore, UEAPME advocates for an **awareness rising campaign** to promote the use of this alternative resolution. The campaign should involve all the stakeholders therefore Member States, business association, judicial system so to promote mediation in the society and overcome reservations the different parties may have. Involving SMEs association is highly important to reach the smaller companies and advertise this instrument. The role of these associations is crucial in order to promote public awareness and trust in the mediation process among businesses. Business organisations could also be allowed to keep a record of mediation settlement procedures in order to collect useful data and statistics. It is important entrepreneurs are well informed about the possibilities and costs of mediation, in order to assess when this alternative can have a real added value.

Concerning the quality of mediators, there are comprehensive codes of conduct already in place to ensure the correct behaviour of mediators. The training in place for mediators is quite satisfying but could be improved. Although basic

¹UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

skills and theory of dispute resolution could be offered through law schools, informal and formal continuous training should be required through special education centres, which should be organised in cooperation with social partners. A European-wide quality standard for the training of mediators could be helpful to ensure the same quality across Member States. In view of the progressive digitalisation of the economy, e-trainings for mediators and e-mediation possibilities should be considered.

According to the Directive, a court where an action is brought may invite the parties to use mediation in order to settle their dispute. The court may also invite the parties to attend an information session on the use of mediation. In practice, this possibility is rarely used and this is why it is important to raise awareness, also within the judicial system. It is nevertheless important to underline that **mediation should always remain voluntary** and not compulsory.

However, incentives to use mediation could be created. UEAPME believes that a “mediation-aid” mechanism could be helpful to promote this instrument. For example, a free of charge mediation mechanism could be put in place for minor disputes, between enterprises. This “mediation-aid” mechanism could be a useful tool to promote the option of mediation among society and to build trust on its efficiency. In addition, a unified “online one stop shop” provided by authorities and explaining mediation opportunities available could be useful.

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